

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws
Subject: 22.2 Service Contract Act

PURPOSE: This standard practice (SP) outlines the procedures for complying with the Service Contract Act (SCA).

POLICY: The Laboratory will comply with the requirements of the SCA in its subcontracts.

SCOPE: This SP applies to subcontracts exceeding \$2,500 when the principal purpose of the subcontract is to obtain services through the use of service employees.

Exemptions

The SCA does not apply to:

- Subcontracts performed outside the United States;
- Work performed by a person employed in a bona fide executive, administrative, or professional capacity;
- Construction, alteration, or repair of public buildings or public works, including painting and decorating;
- Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act;
- Any subcontract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;
- Any subcontract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934; or
- Any subcontract for public utility services

The following services are also exempt if they meet the criteria in 29 CFR 4.123(e)(1)(ii).

- Subcontracts principally for the maintenance, calibration, or repair of the following types of equipment:
 - Automated data processing equipment and office information/word processing systems;
 - Scientific equipment and medical apparatus or equipment where the application microelectronic circuitry or other sophisticated technology is an essential element;
 - Office/business machines, if such services are performed by the manufacturer or supplier of the equipment.

This exemption applies only if:

- The items of equipment are commercial items, the services are furnished at prices based on established catalog or market prices, the subcontractor's service employees are compensated at the same rate under the subcontract as used

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws
Subject: 22.2 Service Contract Act

under contracts with commercial customers; and

- The subcontractor certifies as to the above conditions.

The following additional services are exempt if they meet the criteria of 29 CFR 4.123 (e)(2)(ii):

- Automobile or other vehicle (e.g. aircraft) maintenance;
- Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services);
- Subcontracts with hotels/motels for conferences, including lodging and/or meals;
- Maintenance, calibration, repair and/or installation (where the installation is not subject to the Davis-Bacon Act) for all types of equipment by the manufacturer or supplier of the equipment under a subcontract awarded on a sole source basis;
- Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services);
- Real estate services, including real property appraisal services, related to housing or disposing of real property owned by the Federal Government; and
- Relocation services, but not including actual moving or storage of household goods and related services.

This exemption applies only if:

- The services are commercial;
- The subcontract will be awarded on a sole source basis or on the basis of other factors in addition to price;
- Prices for the services are based on established catalog or market prices;
- Each service employee performing services will spend less than 20% of his/her time performing services under the subcontract; and
- Subcontract service employees will be compensated at the same rates under the subcontract as under contracts with commercial customers.

DEFINITIONS:

Service Contract The SCA contains mandatory provisions for minimum wages and

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws
Subject: 22.2 Service Contract Act

Act (SCA)	fringe benefits; safe and sanitary working conditions; notification to service employees of the minimum allowable compensation and equivalent federal employee classifications and wage rates for the work to be performed; and consequences for violation of the provisions of the Act.
Service Employee	A service employee refers to a person engaged in the performance of a service, other than those employed in an executive, administrative, or professional capacity as defined in 29 CFR Part 541.
Service Subcontract	A service subcontract is a subcontract that directly engages the time and effort of a subcontractor to perform an identifiable task rather than to furnish an end item of supply.

PROCEDURES:

Determination of Applicability of SCA	Prior to solicitation, the procurement specialist must make a determination as to whether the SCA applies. Questions regarding applicability of the Act to a particular procurement will be referred to the DOE Contracting Officer.
Obtaining Wage Determinations	<p>Subcontracts that are subject to the SCA are required to include a wage determination applicable to the services as determined by DOL.</p> <p>Prior to solicitation or modification of an applicable subcontract, a Wage Determination must be obtained from DOL for the following procurement actions:</p> <ul style="list-style-type: none">• Each subcontract subject to the SCA exceeding \$2,500;• Each modification that causes a subcontract subject to the SCA to exceed \$2,500 and (a) extends the subcontract term pursuant to an option clause or other means, or (b) changes the scope of the subcontract so that labor requirements are significantly affected; and• Each multiple year subcontract subject to the SCA exceeding \$2,500 upon the annual anniversary date of the subcontract unless otherwise advised by DOL. <p>Standard Forms (SF) 98 and 98a — Wage determinations are obtained from DOL through submission of an SF 98, <i>Notice of Intention to Make a Service Contract and Response to Notice</i>, and an SF 98a, <i>Attachment A</i>. A fillable copy of the forms may be obtained from the FormsCab on the Procurement Server.</p> <p>Instructions for Completing SF 98 and SF 98a — Follow the instructions for completing both the SF 98 and SF 98a (hereafter referred to as <i>Notice</i>) accompanying the forms. Additional</p>

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws
Subject: 22.2 Service Contract Act

guidance is available from the DOL web site at:

<http://www.dol.gov/esa/regs/compliance/whd/sf98.htm>

If the services are currently being performed by an incumbent subcontractor under a collective bargaining agreement, a copy of the applicable collective bargaining agreement must be submitted with the SF 98 and 98a.

Submission to DOL — The completed *Notice* must be submitted to DOL, through DOE, at least 60 days prior to issuance of a solicitation or modification of an applicable subcontract for known and/or recurring services and at least 30 days prior to issuance of a solicitation for unknown or non-recurring requirement. If a wage determination is required in less than the required time frames, DOE may be contacted by telephone for guidance before submission of the *Notice*.

DOL Response -- The Wage and Hour Division of DOL will mark, date, and sign the Response to Notice section of SF 98 and return the signed original, together with a wage determination, to the Laboratory through DOE. As part of its response, DOL will take one of the following actions:

- Issue and attach applicable wage determination(s);
- Indicate that no wage determination is in effect;
- Indicate that the SCA does not apply; or
- Return the *Notice* for additional information.

Wage Determination

The wage determination(s) must be incorporated into the solicitation and subcontract. By inclusion of the wage determination in the subcontract, the subcontractor will be required to pay its employees working under the subcontract at least the stated hourly wages and fringe benefits specified in the wage determination(s).

Late Receipt or Nonreceipt of DOL Response

In the event that DOL fails to provide a response within the above time frames, DOE should be contacted to determine whether the response will be received before subcontract award or modification must occur. If DOL is unable to provide the response within the necessary time frame, the following actions may be taken.

- For *Notices* submitted within DOL's submission deadlines, issue the subcontract without the wage determination. Wage determinations received after award will not be effective if the work started within 30 calendar days of award.
- For *Notices* submitted late to DOL, the wages and fringe

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws
Subject: 22.2 Service Contract Act

benefits from the previous wage determination or the current collective bargaining agreement may be incorporated into the solicitation or subcontract. When received, the wage determination received in response to the *Notice* must be incorporated into the subcontract. The subcontract price must be equitably adjusted to reflect any changed cost of performance resulting from incorporation of the wage determination. Additionally, DOL may require the retroactive application of the wage determination if the subcontractor has more than five service employees working under the subcontract.

CLAUSES:

Include the *Service Contract Act of 1965, As Amended* clause (FAR 52.222-41) in all solicitations and subcontracts subject to the SCA exceeding \$2,500.

Include the *Fair Labor Standards Act and Service Contract Act — Price Adjustment (Multiple Year and Option Subcontracts)* clause (FAR 52.222-43) in solicitations and subcontracts for fixed-price service subcontracts containing the clause at 52.222-41 that are for multiple years or contain options to renew, and which exceed the Federal simplified acquisition threshold.

Include the *Fair Labor Standards Act and Service Contract Act — Price Adjustment* clause (FAR 52.222-44) in solicitations and subcontracts for fixed-price service subcontracts containing the clause at 52.222-41 that are not for multiple years and do not have options to renew, and which exceed the Federal simplified acquisition threshold.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist shall:

- Determine whether a subcontract involving services is subject to the SCA;
- For subcontracts subject to the SCA:
 - Complete and submit SF 98 and 98a to DOL, through DOE, requesting a wage determination from DOL within the time frames specified;
 - Include the wage determination(s) in the solicitation and subcontract;
 - Submit SF 98 and 98a in accordance with this SP for each extended-term service subcontract exceeding \$2,500 upon the annual anniversary date of the subcontract unless otherwise advised by DOL; and
 - Ensure that applicable clauses are included in the solicitation

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws

Subject: 22.2 Service Contract Act

and subcontract.

REFERENCES:

Prime Contract Clause H.9, Service Contract Act of 1965 (41 U.S.C. 351)
Prime Contract Clause I.114, Contractor Purchasing System, Paragraph (x)(4)
DOE Order 350.1 - Contractor Human Resources Management Programs